IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FOURTH DAY OF OCTOBER
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION No. 22747 of 2005

Between:

K.Sriram

..... PETITIONER

AND

The District Collector, Nizamabad District

And 2 others

.....RESPONDENTS

ORDER:

Seeking a Mandamus, declaring the impugned Memo dated 19.10.2005 issued by the 2nd respondent in rejecting the objections of the petitioner and accepting the nomination of the 3rd respondent as valid for the post of the Director to Ward No.12 (ST General) of Gunkul PACCS of Magdumpoor village, as illegal and arbitrary, the present writ petition is filed.

Heard the learned counsel appearing for the petitioner and the learned Government Pleader for Cooperation, appearing for the 1st and 2nd respondents.

It is the case of the petitioner that the 2nd respondent issued Election Notification for the post of Director to Ward No.12 (ST.General) PACCS Gunkul Society and in pursuance of the said notification, the petitioner and the 3rd respondent submitted their respective nominations. It is further stated that the nomination of the 3rd respondent has to be rejected as per Section 21 (1-A) of the amended Act 4 of 1995 as he has got more than 2 children.

As per the amended Section 21-A (1-A) of A.P.Cooperative Societies Act, 1964, amended and inserted by A.P.Act No.4 of 1995, w.e.f. 02.01.1995, a person having more than two children shall be disqualified for election or for continuing as a Member of the Committee. Provided that the birth of an additional child, within one year from the date of commencement of the Amended Act, 1995, shall not be taken into consideration for the purposes of this section. It is also provided that a person having third child, born within one year from the date of commencement of the amended Act, is not bar. But in the instant case, as per the contention of the petition of the petitioner, the third child of the 3rd respondent was born on 05.01.1996, and therefore, the

3rd respondent incurred disqualification for contesting as a Member in the said Election.

The impugned order goes to show that the petitioner filed objections on 19.10.2005

stating that the 3rd respondent has got four children, subsequent to the prohibited date 02.01.1995, and therefore, his nomination shall be rejected. It is stated in the impugned order dated 19.10.2005 that the third child of the 3rd respondent was born on 05.01.1996 and 4th child was born on 03.04.1995, and as 3rd respondent got operated on 28.12.1995, the objection raised by the petitioner was rejected.

The present writ petition is filed on 20.10.2005. When the matter came up for admission on 21.10.2005, the learned Government Pleader sought time for getting instructions. On instructions, the learned Government Pleader produced relevant records. As per records, the 3rd respondent submitted his nomination on 18.10.2005 as a contesting candidate for the post of the Director to Ward No.12 (ST.General) of Gunkul PACCS of Magdumpoor village, earmarking his communhity as Lambadi. The petitioner filed objections on 19.10.2005 stating the

3rd respondent has got four children. The petitioner alleged that the 3rd child of the 3rd respondent was born on 05.01.1996 and 4th child of the 3rd respondent was born on 07.07.1997. But quite contrary, the records produced by the learned Government Pleader go to show that as per certificate issued by the Head Master, Thimalapur Tanda, Nizamabad District, the 3rd child of the 3rd respondent, by name Kadavat Santhosh, was born on 02.04.1993, and as per the Register of Primary School of Kona Thanda, Nizamsagar Mandal, Nizamabad District, the 4th child of the 3rd respondent, by name Kadavat Bharat, was born on 03.04.1995.

In view of the disputed questions of fact, it cannot be said that the acceptance of nomination of the 3rd respondent is illegal, and hence, the writ petition is liable to be dismissed.

Accordingly, the Writ Petition is dismissed. However, it is left open to the petitioner to file an election petition in a competent Court of law, raising all his contentions, if he so advised. No order as to costs.

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V.ESWARAIAH,J

Dated: 24.10.2005

Dsr